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ment for defendants, J. R. Simpson and another, and plaintiff brings error. Reversed.

Jas. G. Martin, of Norfolk, for plaintiff in error.
W. W. Terry, of Norfolk, for defendants in error.

TURNBULL, et al. v. BRUNSWICK COUNTY.

March 21, 1918.

[95 S. E. 391.]

Highways (§ 127 (3)*—Excessive Taxes—Levy.—If a local tax, legal and regular in other respects and designated for a single purpose, is levied in excess of the authorized rate, the tax is not thereby rendered invalid as to the whole amount but only as to the excess, and hence levy of a road tax, exceeding the amount permitted by Code 1904, § 944a, is void only as to the illegal excess, separable without difficulty from the authorized tax.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 672.]

Error to Circuit Court, Brunswick County.

Application by Edward R. Turnbull, Jr., and another for exoneration from payment of a road tax levied by the county of Brunswick. The court ordered that they be exonerated from only a part thereof, and they bring error. Affirmed.

B. A. Lewis, E. R. Turnbull, Jr., and N. R. Turnbull, all of Lawrenceville, for plaintiffs in error.

Marvin Smithey, of Lawrenceville, for defendant in error.

DERRICK v. COMMONWEALTH.

March 21, 1918.

[95 S. E. 392.]

1. Licenses (§ 5*)—Civil Engineer—Power of Legislature.—The Legislature has power to impose a license tax on the practice of his profession by a civil engineer, upon his acting as a civil engineer, in the business of another as well as in his own business.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 310.]

2. Licenses (§ 11 (1)*—License Tax—Civil Engineering—Statute—“Business.”—Acts 1915, c. 148, § 89, providing that any person or firm who shall, for compensation, engage in the business of civil, mining, mechanical or electrical engineering, shall pay a license tax of \$15 per year for the privilege, does not impose a license tax on the mere practice of one's profession as a civil engineer, the mere

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

acting as such, but not in one's own business as engineer. The mere doing of the work of the profession does not, in all cases, constitute such work the "business" of the person doing it, for, where one employed by another is an independent contractor, he is engaged in his own "business;" otherwise, when he is a mere servant or ordinary employee.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Business. For other cases, see 9 Va.-W. Va. Enc. Dig. 312.]

Error to Circuit Court, Lunenburg County.

H. H. Derrick was convicted of engaging in the business of civil engineer for compensation without having procured a license, and he brings error. Order reversed.

Theo W. Reath, of Philadelphia, Pa.; *J. M. Crute*, of Farmville, and *F. S. Kirkpatrick*, of Lynchburg, for plaintiff in error.

The Attorney General, for the Commonwealth.

BERLIN v. WALL et al.

March 21, 1918.

[95 S. E. 394.]

1. Negligence (§ 136 (1)*—Question of Law).—If the facts as to alleged negligence are clear and undisputed, the court must say as a matter of law whether they constitute negligence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 422.]

2. Landlord and Tenant (§ 164 (1)*—Defective Skylight—Personal Injury—Liability).—Although the lessee who had leased three rooms on the second floor, and his family, including plaintiff, six years old, were entitled, in common with other tenants, to the use of a room in which was a skylight guarded by a railing about 32 inches high, consisting of three strips of plank three inches wide and a top rail, plaintiff could not recover because, while at play in said room, he climbed or fell through the opening between the planks of the railing, or from the top thereof, through the skylight to the floor beneath, the danger being as obvious to the lessee who had occupied the premises for 14 months, while the same condition existed, as to the lessor, although the glass, which was covered with dust, was not the kind generally used for skylights, and the railing was a warning that the lessor had reserved the part of the room taken up by the skylight to give light to the tenant below.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 166.]

3. Negligence (§ 121 (1)*—Existence of Duty).—In an action for personal injuries alleged to have been occasioned by the negligence

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